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(19,460 and 19,461).

Supreme Court of the United States.

OCTOBER TERM, 1904.

The Scottish Union and National Insurance Company,
Appellant,

vs.

Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio; Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio,
Appellees.

No. 360.

Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio, et al.,
Appellants,

vs.

The Scottish Union and National Insurance Company,
Appellee.

No. 361.

Appeals from the Circuit Court of the United States for the Southern District of Ohio.

SUPPLEMENTAL BRIEF FOR WILLIS G. BOWLAND et al., APPELLEES, IN CAUSE No. 360, AND APPELLANTS IN CAUSE No. 361.

EDWARD L. TAYLOR, Jr.,
AUGUSTUS T. SEYMOUR.
KARL T. WEBBER,
Of Solicitors for Willis G. Bowland, et al.

(19,460 and 19,461).

Supreme Court of the United States.

OCTOBER TERM, 1904.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,

APPELLANT,

vs.

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO; ARTHUR I. VORYS, AS SUPERINTENDENT OF INSURANCE, AND WILLIAM S. MCKINNON, AS TREASURER OF THE STATE OF OHIO,

APPELLEES.

[No. 360.]

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO, ET AL.,

APPELLANTS,

vs.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,

APPELLEE.

[No. 361.]

SUPPLEMENTAL BRIEF FOR WILLIS G. BOWLAND et al., APPELLEES IN CAUSE No. 360, AND APPELLANTS IN CAUSE No. 361.

A large part of the argument in the brief of counsel for the Scottish Union and National Insurance Company is upon the question whether the State of Ohio, by its consti-

tution and legislative enactments has in fact provided a method for taxing the bonds deposited with the Superintendent of Insurance under Section 3660 of the Revised Statutes. This question has practically been decided by this court in refusing the application of the Western Assurance Company for a writ of *certiorari* to review the decision of the Circuit Court of Appeals for the Sixth Judicial Circuit in the case of the *Western Assurance Company v. Halliday*, 126 Federal Reporter, 257. The decision of this court is noted in the 193 U. S., 673.

Are the Municipal Bonds deposited with the Superintendent of Insurance taxed by the Laws of Ohio?

It is conceded that the decision of *The Western Assurance Company v. Halliday*, 126 Federal Reporter, 257, if correct, is decisive of the first proposition argued by appellant.

Our opponents also concede that municipal securities may be taxed by a State if found within the territorial limits of such State. Their contention is that in the decision of *The Western Assurance Company v. Harliday* case, the court and Judge Lurton in delivering the opinion refused to follow the decisions of the Ohio Supreme Court construing the Constitution and Statutes of Ohio.

It is true that a federal court will follow and be controlled by the decisions of the highest tribunal of a state in reference to the construction of the Constitution or Statutes of such State. Has the Supreme Court of Ohio so construed the Constitution and Statutes of Ohio upon the question of the taxability of municipal securities, owned by a non-resident of the State and yet being held within the

State, as to be inconsistent with the decision of the case of *The Western Assurance Company v. Halliday.* If not, this court will not be controlled by such decisions, but will construe the Statutes of Ohio independent of such decisions.

I.

A Review of the Decisions of the Supreme Court of Ohio relied upon by Appellant.

Counsel for appellant have cited five decisions of the Supreme Court of Ohio as being in point. And in order to determine whether that court has in fact decided that municipal securities, belonging to non-residents of the State, can not be taxed when found within the State, it is necessary to examine each of these decisions and ascertain the exact point for which they are authority.

In the *Exchange Bank v. Hines*, 3 Ohio St., 1, the act of April 13, 1853, was under consideration. It was claimed that Section 10 of that act which provided that:

> "In making up the amount of moneys and credits which any person is required to list for himself, or any other person * * * he shall be allowed to deduct from the gross amount of money and credits the amount of all bona fide debts owing by such person," etc.

The question involved in the case was whether the deductions thus permitted were forbidden by Section 2 of Article XII of the Constitution of 1851. The court decided said section of said act unconstitutional, that the Constitution permits no deduction of liabilities from money and credits.

The question of the right of the State to tax moneys, credits, or investments in bonds was not in issue. The

exemption claimed under Section 10 of the act which allowed debts to be deducted from the amount of moneys and credits which any person was required to return was the only question before the court.

It is remarkable that counsel should extract the sentence quoted in their brief from page 39 of the opinion of Thurman, J., who took occasion in that case to announce his own views, separately from the opinion of the majority of the court, and that the language of Judge Bartley upon the same point in announcing the majority opinion of the court should be ignored.

Judge Thurman, in illustrating the proposition that debts could not be deducted from the moneys and credits required to be taxed by Section 2 of Article XII of the Constitution, took occasion to say that:

> "Even the $200 exemption, authorized by the section, can not be the moneys or credits. It is confined to 'personal property,' and"

Here opposing counsel commence their quotation:

> "although 'personal property' in legal signification, includes moneys and credits, it is apparent that wherever it is employed in this section, it is used in a limited sense and does not include them."

We call attention to this quotation used by opposing counsel that it may be noted, in passing, that the illustration used by the distinguished judge was not the question before the court for decision. The question was not whether the $200 exemption authorized by the section of the Constitution in controversy could be deducted from moneys and credits, but whether all the debts of a person required to return moneys and credits for taxation under said consti-

tutional provision could be deducted from such moneys and credits.

Upon the very point as to the construction of the words "personal property" in this section of the Constitution, the language of Bartley, C. J., in the majority opinion of the court, is a sufficient answer.

It was contended by counsel that the second section of the Constitution referred to specifies two distinct classes of property prescribing a different mode of taxation for each, and not requiring the same rate or burden to be assessed upon each, upon the theory that moneys, credits, investments in bonds, stocks, joint stock companies, etc., are required by said section to be taxed by a uniform rule; but that all other property, both personal and real, is required to be taxed at its true value in money.

In answering this contention, on page 15, Bartley, C. J., said:

> "If this interpretation be correct, the great object of these constitutional provisions, which has been supposed to be equality and fairness in taxation, might be defeated; for it would permit a burden of taxation to be imposed upon a person whose property consisted of real estate, or some kind of personal property, infinitely greater than that which is imposed on a person whose property consists of moneys, credits, bonds, stocks, etc. But it is manifest, from the context and spirit of these provisions, that it was the intention of the Constitution to provide an effectual barrier against a fruitful source of oppression and misrule, arising from inequalities in taxation, by putting an end to all legislative discretion as to *what* should be taxed, *what* should bear the heaviest burden of taxation, and *what* and *how much* should be exempted from taxation."

And further on, p. 17, he says:

"The provision for taxing property '*according to its true value in money,*' in the second clause of the section, applies to all property, both real and personal, of every description, including the enumerated articles of moneys, credits, stocks, etc., mentioned in the first clause. The words, '*all real and personal property,*' in their legal import, include everything which is the subject matter of private property. It is true, that several classes of personal property, consisting of moneys, credits, stocks, etc., are expressly mentioned in the first clause of the section. But this was inserted by way of precaution and certainty, and not with the view of giving them any new and distinctive character, taking them out of the denomination of personal property. Some years ago, moneys, credits, investments in bonds, stocks, joint stock companies, etc., were not subject to taxation in this state. And there has been much controversy, not only as to the propriety, but also touching the right of taxing credits and investments in bonds, stocks, etc. To remove all question of doubt, therefore, on this subject, it was thought proper to require, by an express enumeration, that 'all moneys, credits, investments in bonds, stocks, joint stock companies,' etc., should be taxed. This provision, arising out of abundant caution, was not intended to give these enumerated things any new distinctive classification; nor does it, in fact, exclude them from the denomination of personal property, to which, by their nature and legal incidents, they belong.

* * * * * * * * *

"In the interpretation of legal instruments, words used out of abundant caution, are often to be tolerated at the expense of tautology. The object of the language of the constitution under consideration, was comprehension, not exclusion. The words, '*all real and personal property,*' therefore, in the second clause of this second section, are to be taken in their most comprehensive legal import, including every kind of real and personal property whatsoever, *not excepting* the several classes of personal property expressly mentioned in the first clause of the section. If this inter-

pretation be in any sense liable to the charge of tautology, it certainly is not to that of repugnancy. If this had not been the meaning intended by the Constitution, there would have been added to the words, *'all real and personal property,'* these words, *'other than that above mentioned.'* It is more in harmony with the settled rules of construction, to convict the lawmaker of some inelegancies in rhetoric, and the use of unnecessary words, than to depart from the leading object and intent of the instrument."

Instead of criticising the language of Judge Lurton on page 261 of the opinion in *The Western Assurance Co. v. Halliday* case on account of that judge refusing to give the words "personal property" the limited meaning and sense proposed by Thurman, J., in the opinion of the *Exchange Bank v. Hines* case quoted on page 39 of the decision, it would have been far better for counsel to have noted the opinion of the majority of the court in that case. Judge Thurman took occasion to announce his own private views of the question before the court, but Judge Lurton in the quotation from his opinion on page 261 has certainly adopted a view with reference to the construction of the words "personal property" both as used in the Constitution and in Section 2731 of the Revised Statutes of Ohio, that is consistent with the opinion announced by the majority of the court in the *Exchange Bank v. Hines* case.

If the rule of decision adopted by the Supreme Court of Ohio is to be binding upon this court certainly the decision of a majority of the court will be taken in preference of that announced by a single judge on his own behalf.

The next case in which it is claimed the Supreme Court of Ohio has announced a decision inconsistent with the right of the State to tax these bonds is the case of *Worthington*

v. Sebastian, 25 Ohio St., 1. In that case, Mrs. Worthington, a resident of Hamilton county, Ohio, owned bonds of a railroad company incorporated under the laws of the State of Indiana. It was claimed by her that these bonds were not taxable in Ohio, because they were issued by a corporation of a foreign State, and were taxable only in the State where that corporation resided.

The court decided that the investments in bonds and stocks of a foreign corporation by residents of Ohio are taxable in Ohio.

The question as to whether the investments in bonds being located within the State of Ohio and belonging to non-residents of the State could be taxed in Ohio, was not before the court and certainly was not decided.

The next case cited is that of *Payne v. Watterson*, 37 Ohio St., 121. In that case, Henry B. Payne, a resident of Cuyahoga county, Ohio, was the owner of certain investments in bonds and claimed the right under Section 2730, Revised Statutes of Ohio, to deduct the amount of his indebtedness from such investments in bonds in making his return for taxation. In this case, as in the case of *Exchange Bank v. Hines*, above quoted, the question under consideration was the construction of the statute of Ohio authorizing an *exemption from taxation* by a claim of the right of the taxpayer to deduct his debts from the investments in bonds required by him to be returned for taxation.

It is a familiar rule of construction that when the question under consideration is the right of the citizen to claim

an exemption from taxation, the language of the statute is strictly construed against such exemption.

New Orleans Ry. Co. v. New Orleans, 143 U. S., 192.
Phoenix Ins. Co. v. Tennessee; 161 U. S., 174-177.
The Delaware Railroad Tax, 18 Wall., 206.

On the other hand, when the question under consideration is the right of a sovereign State to tax property, the language of the statute is construed liberally with the purpose of comprehending rather than excluding subjects of taxation. The claim of Payne being that the term "investments in bonds," should be construed by the Supreme Court of Ohio to come within the meaning of the term "credits," as used in that part of Section 2730, which authorized the taxpayer to deduct his debts from the "credits" required to be returned for taxation, the court held against such a construction, and that the term "credits" as used in that connection did not include "investments in bonds."

The court was not considering the sovereign power of the State to tax property under the term "investments in bonds or credits," but was construing a statute authorizing an exemption from taxation, and therefore giving the narrowest meaning possible to the words used in said Section 2730.

In the case of *Grant v. Jones*, 39 Ohio St., 506, we have already analyzed in the brief before filed. Under the facts in that case the State had jurisdiction over neither the owner of the credits nor of the credits themselves.

In the opinion in *Myers v. Scaberger*, 45 Ohio St., 232, it was held that where the creditor resides in another State, a loan of money secured by mortgage on real estate is not subject to taxation in this State, although the securities are

in the hands of an agent residing here, entrusted by the terms of his agency with the collection of the interest and principal when due, and its transmission to the creditor when collected. In that case, the defendant, Mrs. Seaberger, was a resident of Chicago, Illinois. The amount of $17,000 was listed for taxation against her in Knox county, Ohio, on account of loans made for her upon mortgage securities in that county by her uncle acting as her agent and previous to her marriage. After her marriage he continued to act for her in making collections of principal and interest, but not otherwise. He had no power to make investments. He was required by his agency to transmit the collections as soon as made. The uncollected securities, however, remained in his hands for the purposes of the agency as just stated. It was decided that the money so loaned was a credit of a person not residing in this State and not subject to taxation by the State authorities, although the debtor may reside here. The decision turns upon the proposition that a debt should be taxed at the place where it is owned and not at the place where it is owed, and also upon the nature of the agency involved in the case.

In none of the five decisions quoted by counsel for appellant has the question been before the Supreme Court of Ohio as to whether investments in bonds are intangible property, incapable of having a situs for taxation within the State, when owned by a non-resident of the State. And yet that is the question in the case at bar. Until the precise question here involved has been presented to the Supreme Court of Ohio, and decided, this court will follow its own decisions and not be controlled by those of the State court.

It is claimed that the decision of the case of *Nelson A. Sims, Treasurer, v. Best*, 25 Ohio Circuit Dec., p. 149, as

affirmed by the Supreme Court under the title of *Heintz et al. v. Cameron et al.*, 70 Ohio St., 491, holds that investments in bonds are intangible personal property and taxable only at the residence of the owner thereof. In that case bonds deposited by a foreign corporation under a statute similar to Section 3660 of the Revised Statutes were held to be taxable in Ohio. The question as to whether they were so taxed as tangible or intangible personal property was not decided by the court. The decision turned upon and was controlled by the exact language of Section 2735 of the Revised Statutes of Ohio, and as interpreted by the decision of *Pelton v. Transportation Company*, 37 Ohio St., 450.

In Pelton v. Transportation Company, it was held that the principal office of the company is the residence of such corporation within the meaning of Section 2735 of the Revised Statutes of Ohio.

The court in the *Sims v. Best* case decided that the principal office of the Interstate Savings Investment Company, a corporation organized under the laws of West Virginia, having been designated by the terms of its corporation to be in Hamilton county, Ohio, that for the purpose of making returns under Section 2735, it was a resident of Hamilton county, Ohio, and therefore as such resident was required to list all of its property, *tangible* and *intangible* in Hamilton county.

In the case at bar, the Scottish Union and National Insurance Company has no principal office or place of business within the State of Ohio, and therefore all its personal property, moneys, credits and investments in bonds were required to be listed in the township, city or village where the property was when listed.

It is noticeable that the language of Section 2735 here in point and decisive of this case, to wit,

> "*And if not, then in the township, city or village where the property is when listed,*"

is omitted by opposing counsel from the quotation of such section in their brief.

The attempt to torture this decision to support the proposition that municipal bonds have been held by the Supreme Court of Ohio to be intangible personal property and non-taxable except at the residence of the owner, finds no support in the decision rendered by the State Circuit Court.

The right of the State to tax choses in action belonging to foreign corporations doing business within the State of Ohio was upheld in the case of *Hubbard as Treasurer v. Brush*, 61 Ohio St., 252. In that case the Sandusky Portland Cement Company was a corporation organized under the laws of West Virginia. The defendant, Brush, was a resident of Cuyahoga county, and owned certain shares of stock of such corporation and claimed such stock to be exempt from taxation under the latter part of Section 2746 of the Revised Statutes of Ohio, which provides that:

> "No person shall be required to list for taxation any share or shares of the capital stock of any company, the capital stock of which is taxed in the name of such company."

The Sandusky Portland Cement Company had its principal office and place of business and property in Erie county, Ohio, and it was claimed that it listed and paid taxes in that State on all its property. All of its property except its accounts receivable were listed for taxation in the name of said company in Ohio. It was declared in the opinion of the court (p. 261), that if any part of the cor-

porate property is not taxed within this State the owners of shares of its stock who are residents of this State are not exempt by virtue of the provisions of said Section 2746.

The decision of the case turned upon the question as to whether the choses in action of the corporation which were found to aggregate eight thousand dollars, should have been listed for taxation in this State. It was shown that the choses in action consisted of promissory notes, book accounts and other evidences of indebtedness and were kept in the office of such company in this State. The court said on page 263:

> "However, notwithstanding all this, doubtless the legal situs of this intangible property for most purposes, was that of the residence of the corporation, which, in law, is within the State by whose authority it was created."

In spite of this, however, the decision of the court as announced in the second syllabus on page 252, is as follows:

> "Choses in action, whether book accounts, promissory notes or the like, of foreign corporations that are kept in this State and arise out of the corporate business transacted here, are subject to taxation under the provisions of Section 2744, Revised Statutes."

This decision comes far nearer to deciding the exact point in issue in this case than any of the decisions cited by counsel for appellant, and yet the exact question as to whether investments in bonds owned by a non-resident of the State, if found within the State are taxable in Ohio, was not there presented. And this exact question does not appear to have ever been presented to the Supreme Court of Ohio, or to have been decided by that tribunal. That the municipal bonds owned by the Scottish Union and National

Insurance Company and deposited with the Superintendent of insurance and Treasurer of State were within the State of Ohio, and Franklin county, during the years 1895 to 1902, inclusive, is admitted. They were required by law to be in the State, and being so held, and used in the business of such foreign corporation transacted within the limits of the State, such bonds were required to be listed for taxation in Franklin county, at the place where they actually were, under Sections 2735 and 2744 of the Revised Statutes of Ohio.

II.

The Statutes of Ohio provide for the taxation of investments in bonds owned by Foreign Corporations.

The statutes of Ohio so far as they relate to the taxation of the personal property of foreign corporations found within this State have already been discussed by us in our brief. It is sufficient to notice the precise point made by appellant upon the language of the statutes of Ohio relating to such taxation. It is claimed that Sections 2731 and 2730 of the Revised Statutes of Ohio limit the taxation of investments in bonds to such bonds as are owned or controlled by persons residing within the State; that Section 2744, although it requires the president, secretary, or principal accounting officer of every insurance company, whether incorporated by any law of this State or not, to list for taxation all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation, within the State, at the actual value in money, does not specifically provide for the return by such

persons of investments in bonds. That the term "personal property" as used in Section 2744 is not broad enough to include investments in bonds, because it must necessarily be construed in reference to the classification of property specified in Sections 2731 and 2730. The language of Judge Lurton in the opinion of the Western Assurance Company v. Halliday case, where he holds that the "'investments in bonds" required to be returned by foreign insurance companies, comes within the provisions of Section 2744 requiring the taxation of all "personal property" of the corporations therein named, is criticised because the construction of Section 2744 there adopted is inconsistent with the classification of subjects for taxation specified in said Sections 2730 and 2731.

Section 2731 forms no part of the taxing machinery of the State of Ohio. According to the decision of the Supreme Court of Ohio in *Chisholm v. Shields*, 67 Ohio St., 374, that is a declaratory statute, and the subsequent sections of the statutes are necessary to carry this declaratory section into execution, and the words used in Section 2731 do not expand the language used in the sections which follow. It may be said that neither does the language used in Section 2731 limit the language used in the provisions of the statutes which follow it. If Sections 2730 and 2731 were intended by the Legislature to exempt any property from taxation not expressly authorized to be exempted by the Constitution of Ohio, the same was null and void. The Constitution having required all investments in bonds to be taxed, it was not possible for the Legislature by the provisions of Section 2731 to say that only bonds of persons residing within the State should be taxed.

An examination of Section 2731 shows that it provides in the first section that:

> "All property, whether real or personal, in this State, and whether belonging to individuals or corporations; and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this State, shall be subject to taxation, except only such as may be expressly exempted therefrom."

This section uses the same classification as is used in Section 2 of Article XII of the Constitution of Ohio, and the language of Bartley, C. J., in construing this language of the Constitution in *Exchange Bank v. Hines*, 3 Ohio St., p. 1, and quoted by us above, is pertinent to the construction of the same language in this statute. The words, "all property, whether real or personal in this State," used in Section 2731 include all moneys, credits, investments in bonds, etc., of both domestic and foreign corporations.

It is far more important that Section 2744 of the Revised Statutes of Ohio should be construed so as to be consistent with the Constitution of Ohio than that the same should be consistent with the language of Sections 2730 and 2731 as construed by our opponents. The rule to be adopted in determining what the words "personal property" shall mean as used in Section 2744, it seems to us, is that announced by Bartley, C. J., in the case of *Exchange Bank v. Hines*, at page 18:

> "In the interpretation of legal instruments, words used out of abundant caution, are often to be tolerated at the expense of tautology. The object of the language of the Constitution under consideration (Sec. 2, Article XII) was comprehension, not exclusion. The words, "*all real and personal property*," therefore, in the second clause of this section, are to be taken in their most comprehensive legal import, including every

kind of real and personal property whatsoever, *not excepting* the several classes of personal property expressly mentioned in the first clause of the section."

If the words "personal property" in Section 2744 include investments in bonds, said section complies with Section 2 of Article XII of the Constitution. If those words do not include investments in bonds, not only are the investments in bonds of foreign corporations not required to be listed, but the investments in bonds of corporations residing within the State are equally not required to be listed under said section, and that class of property belonging to corporations, whether foreign or domestic, must escape taxation.

III.

Section 2745, Revised Statutes of Ohio, provides for a privilege tax and was not intended as an exclusive method of taxation for Foreign Insurance Companies.

The taxation provided for foreign insurance companies by Section 2745 of the Revised Statutes is not a tax upon property, but a tax upon the privilege of doing business within the State.

State ex rel. v. Reinmund, 45 Ohio St., 214 and 219, following the case of
Western Union Telegraph Co. v. Meyer, 28 Ohio St., 522.

In each of the cases just cited, such a tax as that imposed by Section 2745 of the Revised Statutes of Ohio is held to be a charge for the privilege of exercising franchises and powers within the State by foreign corporations.

It is conceded that Section 2745 was originally a proviso in the act which contained Section 2744.

The act in question was passed in 1853 and at that time Section 3660 requiring deposits of bonds by foreign insurance companies was not in force, it having been passed in 1867. At the time of the enactment of the taxing law of 1853, foreign insurance companies had no property subject to taxation within a State. The purpose of the proviso incorporated into that law, and now known as Section 2745, was for the purpose of requiring such corporations to pay some tax in Ohio. It was by way of a condition for the privilege extended to them of doing business within the State. Construing this section in the light of the conditions that existed at the time of its passage, it was the only available method of requiring foreign insurance companies at that time to pay any taxes whatever. There is nothing in the language of the section as originally passed which provided that Section 2745 should be an exclusive mode of taxation, or that the returns to be made by such foreign insurance companies should relieve them from making returns under Section 2744.

When the Legislature of 1867 passed a law requiring bonds to be deposited by foreign insurance companies as an additional condition precedent upon their right to do business within the State, such bonds were not exempted from taxation, neither by that language of that act or any other statute of the State of Ohio. In construing Sections 2731 and 2734 and 2744 of the Revised Statutes together, it is apparent that the personal property of all kinds, including moneys, credits, investments in bonds, stocks and joint stock companies of corporations, foreign or domestic, are required to be listed for taxation within the State of Ohio, and this construction is necessary in order that those statutes may be consistent with the constitutional requirements.

Counsel's construction, of necessity renders them unconstitutional and void.

The Legislature of Ohio has no power to enact a system of taxation for foreign insurance companies which shall be in lieu of the general laws relating to the taxation of their real and personal property. In the language of Bartley, J., in the *Exchange Bank v. Hines* case, on page 15:

> "It was the intention of the Constitution to provide an effectual barrier against a fruitful source of oppression and misrule, arising from inequalities in taxation, by putting an end to all legislative discretion as to *what* should be taxed, *what* should bear the heaviest burden of taxation, and *what* and *how much* should be exempted from taxation."

IV.

The Constitutionality of the Ohio Statutes providing for the collection of taxes.

The remaining part of the argument in brief for appellant is based upon the theory of counsel that a State can impose no obligation upon a non-resident to pay a tax on account of property belonging to such non-resident, having a situs for taxation and being taxed within such State. The contention is inconsistent with the decisions of this court in the following cases:

Bristol v. Washington Co., 177 U. S., 133.
Maryc v. Baltimore & Ohio Co., 127 U. S., 117.
Pullman's Palace Car Co. v. Pennsylvania, 141 U. S., 18.
American Refrigerator Transit Co. v. Hall, 174 U. S., 70.
Union Refrigerator Transit Co. v. Lynch, 177 U. S., 149.
Florida Central Ry. Co. v. Reynolds, 183 U. S., 475.

A State can impose an obligation to pay taxes upon a non-resident, who brings property within its territorial limits in consideration of the protection afforded said property; and upon failure to pay this obligation, to the extent of all its property within the State, said non-resident will be subject to the laws providing for the collection of said taxes.

The right of the State to impose an obligation upon the owner of property is a necessary incident of its right to tax the property of a non-resident.

The definition of taxes, that they are obligations created by legislative authority, is based upon the theory that the owner of property is charged by law with the duty of contributing to the support of that government which affords protection to his property.

Desty on Taxation, Sec. 6.
Florida Central Railway Co. v. Reynolds, 183 U. S., 475.
Bristol v. Washington County, 177 U. S., 133, 145.

If the State has the right to impose an obligation upon a non-resident it has the right to enforce that obligation by laws which operate only upon property within its territorial limits.

The State of Ohio, as a matter of right, imposed certain conditions upon such foreign insurance companies as desired to transact a part of their business with the State. The Scottish Union and National Insurance Company having accepted such conditions, and having agreed to comply with all the laws of the State of Ohio, can not now be heard to complain of the right of the State to tax the property voluntarily brought within the scope of its tax laws. Nor

can it deny the power of the State to collect such taxes from any property which it may have within the State.

Respectfully submitted,

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